



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8443151

Date: JULY 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an energy policy researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With respect to his prospective work in the United States, the Petitioner provided March 2018 email exchanges with staff at [REDACTED] a consultancy business in the energy industry, and [REDACTED] a power generation equipment company, relating to his interest in research analyst positions.⁵ In addition, the Petitioner contends that he has "had a discussion with [REDACTED] Executive Recruiter for [REDACTED] Oil & Gas division, about opportunities at the company," but the record does not include documentation of their email exchange to corroborate his claim that he was recruited for a position with that company.⁶

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research involving "the transition from fossil fuel resources to renewable sources of energy and the fiscal systems underlying the petroleum industry." He explained that his research projects are aimed at "the synergy between fossil fuels and renewable energy," the structure of "partnerships in the oil industry" and best practices relating to these partnerships, and developing "balanced systems for the oil industry."

The record includes information about greenhouse gas intensity and emissions, industry revenue derived from oil and natural gas worldwide, the value of investment in renewable energy capacity, employment in the U.S. oil and gas extraction industry, global temperature projections, and hiring trends in the U.S. solar industry. Additionally, the Petitioner provided articles discussing the level of investment resulting from [REDACTED] petroleum partnerships, the amount of energy consumption and production attributable to renewable energy, the mix of energy resources utilized by the United States, and local job creation due to the multiplier effect. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented his Master of Science diploma (2011) and school transcript from the [REDACTED] University of [REDACTED] [REDACTED] as well as an academic credential evaluation indicating that the aforementioned diploma is the foreign equivalent of a master's degree in Energy Planning from an accredited college or university in the United States.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ Although the Petitioner asserted that an "attached email exchange" confirmed his discussion with [REDACTED] the record does not contain this evidence.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. In addition to the aforementioned information about the petroleum industry and renewable energy resources, the Petitioner offered letters of support discussing the potential benefits of his proposed research and how it stands to advance his field. For example, [redacted] professor of economics at University of [redacted] stated that the Petitioner’s research is “useful in studying the state of the oil industry in the United States” due to our country’s “vast oil reserves” and that his work “provides valuable insights into the economic feasibility of increasing renewable energy use.” The record also includes documentation indicating that the benefit of the Petitioner’s proposed research has broader implications, as the results are disseminated to others in the field through industry journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we conclude that he meets the first prong of the *Dhanasar* framework.⁷

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. He contends on appeal that his education, experience with the [redacted] energy company [redacted] research articles, and citation evidence indicate that he is well positioned to advance his proposed endeavor. As previously noted, his proposed consulting and project management work does not meet the first prong of the *Dhanasar* framework. Because the Petitioner’s proposed energy policy research has broader implications for the field (unlike his work as a consultant or project manager), our analysis under this prong will focus on whether he is well positioned to advance his proposed research relating to the transition from fossil fuel resources to renewable sources of energy and the fiscal systems underlying the petroleum industry. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance that research under *Dhanasar*’s second prong.

The record includes documentation of the Petitioner’s curriculum vitae, academic credentials, published articles, conference presentations, and peer review activity. He also offered evidence of articles that cited to his published and presented work, and letters of support discussing his work experience and past research projects.

In letters supporting the petition, several of the Petitioner’s references discussed his prior research involving fiscal systems and ways the oil industry could foster utilization of renewable energy sources.⁸ For example, [redacted] a researcher at the [redacted] in France, indicated that the Petitioner assessed “whether the diversion of petroleum rents would encourage the use of renewable energy sources.” [redacted] stated that “[t]he results of [the Petitioner’s] analysis indicated that the innovation program and solar program would be covered solely

⁷ While the Petitioner has demonstrated that his proposed energy policy research on partnerships in the oil and gas industry has national importance, the record does not establish that performing consulting and project management work for such partnerships would impact his field or the U.S. petroleum industry more broadly, as opposed to being limited to his future U.S. employer or the clients he intends to serve. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s proposed consulting and project management services do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

⁸ We discuss only a sampling of these letters, but have reviewed and considered each one.

by the government budget. He determined that the remainder of the budget is large enough to subsidize the ethanol fuel supply.” Additionally, [redacted] noted that this “work confirmed that revenue produced from fossil fuel exploration is sufficient funding to support the development of renewable energy sources,” but he does not explain how the Petitioner’s findings have affected the oil industry, have impacted the development of renewable energy resources, or otherwise constitute a record of success in his field.

With regard to the Petitioner’s research relating to fiscal systems’ impact on “the economic attractiveness of oil production projects for both industry and government,” [redacted] assistant professor at [redacted] University of [redacted] stated that the Petitioner found that tax/royalty systems result in a higher internal rate of return and lower government take, making them more profitable than production sharing contracts. [redacted] further indicated that the Petitioner “discovered a relationship between fiscal systems and reported world oil reserves, because the probability of a given oil field varies based on the fiscal system of the country in which it is discovered.” In addition, [redacted] asserted that the Petitioner’s work “has become an important resource for others” and he offered the example of [redacted], who cited to the Petitioner’s work in her paper, entitled [redacted] [redacted]” Likewise, [redacted] manager of the [redacted], at [redacted] an accounting and consulting services company, contended that others in the field “have expressed intense interest in [the Petitioner’s] work” and he also identified [redacted]’ paper as an example. [redacted]’ paper, however, does not distinguish or highlight the Petitioner’s work from the 23 other articles she cited to in her paper.⁹

As it relates to the citation of Petitioner’s work, he presented May 2018 information from Google Scholar indicating that his articles, entitled [redacted] [redacted] and [redacted] [redacted] each received 33 and 10 citations, respectively.¹⁰ He also offered a self-compiled citation chart reflecting that [redacted] [redacted]” was cited 9 more times and that [redacted] [redacted] was cited 15 additional times.¹¹

Furthermore, the Petitioner provided October 2017 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including “Economics and Business.” This documentation from Clarivate Analytics states that “[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution.” Additionally, the Clarivate Analytics citation data is from October 2017, and therefore does not

⁹ The record includes a copy of [redacted] paper in which she cites to the Petitioner’s observation that under a production sharing contract, “the state is able to better control operators’ production rate during the whole contract period.” The introduction to her paper states that it “was selected for presentation by merit of placement in a regional student paper contest” and that “[c]ontents of the paper, as presented, have not been reviewed by the Society of Petroleum Engineers.”

¹⁰ This information from Google Scholar reflects that none of the Petitioner’s remaining articles have received any citations.

¹¹ This self-compiled information was accompanied by copies of the additional articles that cited to the Petitioner’s work.

capture citations that occurred after 2017, while the Petitioner's Google Scholar citation report is dated May 2018.¹² Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record.

Additionally, the Petitioner presented an article in *Scientometrics* written by [redacted] and [redacted], entitled '[redacted]'. This article presents recommendations for '[redacted]' for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." The Petitioner's field of energy policy, however, does not fall under "the natural and life sciences." Moreover, with regard to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation." Regardless, the Petitioner has not demonstrated that the number of citations received by his articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong.

With respect to the Petitioner's work experience "as [redacted] in [redacted]'s International Department," [redacted] a retired senior petroleum engineer at [redacted], stated that the Petitioner "represented the company in a number of joint ventures in Africa and Asia" and that "[h]e took on both the internal team leadership of the projects and the external representation of [redacted] in all partnership meetings and decisions. The central project during this period involved exploring [redacted] blocks in [redacted] in partnership with [redacted]'s state-owned oil company." While [redacted] asserted that the Petitioner successfully advised India's state-owned oil company against drilling wells in a block with sections that "did not offer enough economic return to be considered fully commercial," he did not provide examples how the Petitioner's energy policy research has influenced the petroleum industry, has served as an impetus for progress or generated positive discourse in his field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

Furthermore, while the Petitioner's March 2018 email exchanges with staff at [redacted] and [redacted] reflected his interest in working for these companies, the communications do not offer adequate information to establish whether his proposed work with these companies will involve research relating to his proposed endeavor. Without sufficient evidence demonstrating the means or financial support to undertake his proposed energy policy research in the United States, the Petitioner has not shown that his plan for future activities renders him well positioned to advance his endeavor. Moreover, the reference letters initially submitted and provided in response to the Director's request for evidence (RFE) do not contain sufficient information concerning the Petitioner's research activities since 2014, and the record does not show that he has published or presented any research in his field from 2014 until he filed the petition in May 2018, so as to demonstrate continued progress towards achieving his proposed endeavor.

¹² A webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

Regarding his peer review activity, the Petitioner initially provided an April 2018 email thanking him for reviewing a single manuscript submitted to *Energy Policy*. In response to the Director's RFE, the Petitioner submitted a June 2019 letter from [redacted] of *Energy Policy*, asserting that the Petitioner "has been selected to perform peer review for our journal on multiple occasions," but this letter does not identify the specific articles reviewed by the Petitioner or the dates the reviews were completed. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

Additionally, the Petitioner asserted that he has received funding for his research from a government agency. He presented his 2014 article in *Energy Policy* that he coauthored with [redacted] from University of [redacted] and with [redacted] and [redacted] from [redacted] University of [redacted]. At its conclusion, this article acknowledges "financial support from the [redacted] [redacted] for doing this research." The article, however, does not identify who among the aforementioned authors was primarily responsible for securing the funding for their research project. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than one of the aforementioned professors) was mainly responsible for obtaining [redacted] funding for the research project.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and professional career, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the energy policy field or that it has generated substantial positive discourse in the petroleum industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research aimed at the transition from fossil fuel resources to renewable sources of energy and the fiscal systems underlying the oil and gas industry. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, expertise in energy planning, experience in his specialty, the importance of his field, and the impracticality of

labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.